



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable R. V. Rayford
County Auditor
Rusk County
Henderson, Texas

Dear Sir:

Opinion No. 0-3211

Re: Purchase of land for airport out
of county general fund.

Reference is made to your letter of February 23,
1941, requesting the opinion of this Department upon the
following question:

"Does the Commissioners' Court have the
authority under Section 15 of R.C.S. 2351, Pow-
ers and Duties of Commissioners' Court, and Art.
1269h R.C.S. to purchase up to 640 acres of land
for an airport in Rusk County, out of the current
general fund revenues or is it mandatory for
the court to call an election and issue bonds to
pay for this tract of land if the election carries.

"We are going under the fact that the county
has the money in the general fund and is able to
pay for the 640 acres."

Article 1269h, Vernon's Annotated Civil Statutes,
reads as follows:

"Sec. 1. That the governing body of any in-
corporated city in this State may receive through
gift or dedication, and is hereby empowered to acquire
by purchase, without condemnation or by purchase
through condemnation proceedings, and thereafter main-
tain and operate as an Air port tracts of land, either
within or without the corporate limits of such city
and within the county in which such city is situated,
the land acquired and held by any such city never
to at any one time exceed six hundred forty acres, and
the Commissioners' Court of any county may likewise
acquire, maintain and operate for like purpose tracts
of land within the limits of the county, not to exceed
at any one time six hundred forty acres.

"Sec. 2. For the purpose of condemning or purchasing either or both, lands to be used and maintained as provided in Section 1 hereof, and improving and equipping the same for such use, the governing body of any city or the Commissioners' Court of any county, falling within the terms of such Section, may issue negotiable bonds of the city or of the county, as the case may be, and levy taxes to provide for the interest and sinking funds of any such bonds so issued, the authority hereby given for the issuance of such bonds and levy and collection of such taxes to be exercised in accordance with the provisions of Chapter 1 of Title 22 of the Revised Civil Statutes of 1925.

"Sec. 3. Any Air Port acquired under and by virtue of the terms of this Act (art. 1269h.) shall be under the management and control of the governing body of the city or the Commissioners' Court of the county acquiring the same, which is hereby expressly authorized and empowered to improve, maintain and conduct the same as an Air Port, and for that purpose to make and provide therein all necessary or fit improvements and facilities and to fix such reasonable charges for the use thereof as such governing body or Commissioners' Court shall deem fit, and to make rules and regulations governing the use thereof. All proceeds from such charges shall be devoted exclusively to the maintenance, up-keep, improvement and operation of such Air Port and the facilities, structures, and improvements therein, and no city or county shall be liable for injuries to persons resulting from or caused by any defective, unsound or unsafe condition of any such Air Port, or any part thereof, or thing of any character therein or resulting from or caused by any negligence, want of skill, or lack of care on the part of any governing Board or Commissioners' Court, officer, agent, servant or employee or other person with reference to the construction, improvement, management, conduct, or maintenance of any such Air Port or any structure, improvement, or thing of any character whatever, located therein or connected therewith.

"Sec. 4. That in addition to and exclusive of any taxes which may be levied for the interest and sinking fund of any bonds issued under the authority of this Act (Art. 1269h.) the govern-

ing body of any city or the Commissioners' Court of any county, falling within the terms hereof, may and is hereby empowered to levy and collect a special tax not to exceed for any one year five cents on each One Hundred Dollars for the purpose of improving, operating, maintaining and conducting any Air Port which such city or county may acquire under the provision of this Act (Art. 1269h.), and to provide all suitable structures, and facilities therein. Provided that nothing in this Act (Art. 1269h.) shall be construed as authorizing any city or county to exceed the limits of indebtedness placed upon it under the Constitution."

Section 9 of Article 8 of our Constitution reads in part as follows:

"...and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads: provided, that a majority of the qualified property taxpaying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county."

In Carroll vs. Williams, 109 Tex. 155, 202 S.W. 504, the Texas Supreme Court used the following language:

"Second. Going to the real gist of the main issue before us, section 9 of Article 8 of our state Constitution, supra, inhibits any and all transfers of tax money from one to another of the several classes of funds therein authorized, and, as a sequence, the expenditure, for one purpose therein defined, of tax money raised ostensibly for another such purpose. The immediate purpose in so pre -

scribing a separate maximum tax rate for each of the classes of purposes there enumerated is, no doubt, to limit, accordingly, the amount of taxes which may be raised from the people, by taxation, declaredly for those several purposes or classes of purposes, respectively. But that is not all. The ultimate and practical and obvious design and purpose and legal effect is to inhibit excessive expenditures for any such purpose or class of purposes. By necessary implication said provisions of section 9 of article 8 were designed, not merely to limit the tax rate for certain therein designated purposes, but to require that any and all money raised by taxation for any such purpose shall be applied, faithfully, to that particular purpose, as needed therefor, and not to any other purpose or use whatsoever. Those constitutional provisions control, not only the raising, but also the application, of all such funds; and such is the legal effect of articles 2242 and 7357, supra, when properly construed and applied.

True, the Constitution does not say, in so many words, that money raised by a county, city, or town, by taxation for one such purpose shall never be expended for any other purpose---not even for another of the five general classes of purposes defined and approved in said section 9--but that, we think, is its plain and certain meaning and legal effect. The very definitions of those several classes of purposes, and the declaration of authority to tax the people therefor, respectively, coupled, as they are, in each instance, with a limitation of the tax rate for that class, must have been predicated upon the expectation and intent that, as a matter of common honesty and fair dealing, tax money taken from the people ostensibly for one such specified purpose shall be expended, as needed, for that purpose alone, as well as that the tax rate for that particular class, in any one year, shall not exceed the prescribed maximum."

In Opinion No. O-413 we were concerned with the authority of the commissioners' court to purchase rights-of-way out of moneys in the county general fund. We held general fund moneys may not be so used; that under Section 9 of Article 8 of the Constitution money for the purposes contemplated must come from the Constitutional road and bridge fund.

In our Opinion No. 0-3142 it appeared from the facts that the county had a surplus in the permanent improvement fund. It desired to use this money to purchase airport property under Article 1269h, supra. We held that since airport indebtedness would be a charge against the county permanent improvement fund, the county might, at its option, issue bonds or use a surplus existing in such permanent improvement fund.

You are accordingly advised that under the authorities cited revenues in one Constitutional fund may not be diverted for uses other than the purposes for which such taxes were levied; that while the county may use a surplus in the permanent improvement fund for the purchase of airport property under Article 1269h, supra, general fund revenues may not be diverted by the commissioners' court for such purposes.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/James D. Smullen
James D. Smullen
Assistant

JDS:js:wc

APPROVED MARCH 25, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman